

No. 293

(DD)

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Supreme Court of the United States

OCTOBER TERM—1944

Meseck Towing & Transportation Company,

Petitioner,

against

EDWARD E. RICE, on behalf of himself and of his co-partners, doing business under the firm name and style of JACOB RICE & SONS, as owners of the scow "GEORGE R.",

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

CHRISTOPHER E. HECKMAN,
Counsel for Petitioner.



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TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, Meseck Towing & Transportation Company, prays that a writ of certiorari issue to review the decision and decree of the Circuit Court of Appeals in the above case, involving damage to libellant's scow "George R." while being towed in ice for which petitioner's tug "Marion A. C. Meseck" was held liable by the opinion of the Circuit Court of Appeals (Record pp. 64-67), reported at 148 F. (2nd) 522 which reversed the decision of the District Court (Record pp. 51-53) reported at 53 Fed. Supp. 618.

Statement of Facts

Petitioner's tug, "Marion A. C. Meseck", was working as a "shifting tug" for the steamship company operating Pier 97, North River, New York, where, manned by em-

ployees of the petitioner, she moved vessels from and to points along and near Pier 97 as and when directed by the steamship company's so-called harbor master, or boss stevedore. The steamship company paid petitioner on an hourly basis for the tug's services regardless of the amount of shifting the tug may have done in any hour.

On the morning of January 20, 1943, libellant's scow, "George R.", with cargo consigned to that pier, was lying at Pier 97 where it had been sent by its charterer. To complete the discharge of the scow's cargo, the steamship company harbor master directed the "Marion A. C. Meseck" to move the "George R." from her then position to a point along the side of Pier 97, abreast of a certain door in the shed on the pier. That berth was occupied by another vessel which the "Meseck" first moved before she maneuvered the "George R." into the designated berth. In the course of this maneuver, her master, who was in the tug's pilot house, was advised by the steamship company's harbor master who was aboard the "George R." that there was some ice between the "George R." and the pier, but that as the "Meseck" pushed the stern of the "George R." to the pier, this ice would float under the spiles of the dock (8th Finding of Fact, R. p. 55). The "Meseck" pushed against the stern of the "George R." slowly and carefully until it was against the pier and the scow was then tied up. Later she was found to have sustained damage attributed to the ice.

The District Court found that the "Meseck" pushed the "George R." into the pier carefully and properly (110th Finding of Fact, R. p. 55); that there were no contractual relations between the libellant and the "Meseck"; that the orders to move the "George R." to the designated point along the pier were given by the harbor master; that the orders to push the scow into the pier when she arrived at the designated point were given by the harbor master and the head stevedore, in the employ of the parties who were paying for the services of the "Meseck" (Finding 13th,

R. p. 168); and concluded that as the "Marion A. C. Meseck" was liable only for negligence and as her engagement was to carry out the orders and directions of the harbor master and the stevedore in charge of the pier, which she did properly, she should not be held liable. The District Court also found that any risk in maneuvering the "George R." into the pier was assumed by those who directed the "Meseck" to do so.

The Circuit Court of Appeals reversed without disturbing the District Court's findings of fact.

The Question Presented

The question here involved which is of great importance to the entire marine industry is: May the master of a tug doing work for the consignee of a scow assume that the consignee has authority to bind the scow's owner when the former orders the scow moved during dangerous ice conditions?

Reasons Relied Upon for the Allowance of the Writ

1. The question involved is of paramount importance to the marine industry. In New York Harbor alone, with its myriads of piers, scows and barges without motive power are moved hourly along steamship piers by "shifting tug" at the direction of the steamship companies' harbor masters in charge of the piers.

2. It is well settled that the towed vessel assumes the risk of towage in ice when the orders to tow are given by her owner or charterer with knowledge of the ice conditions. It is important for the maritime industry to know whether a shifting tug may accept orders from the consignee of a scow under the assumption that the consignee has implied authority to act for the owner in assuming the risk of damage by ice.

Therefore the question should be finally and definitely determined by this Court.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Circuit Court of Appeals for the 2nd Circuit, commanding that Court to certify and send to this Court for its review and determination on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket 267, October Term 1944, Edward E. Rice, on behalf of himself and of his co-partners doing business under the firm name and style of Jacob Rice & Sons, as owners of the scow "George R.", Libellant-Appellant, against Tug "Marion A. C. Meseck", Meseck Towing & Transportation Company, Claimant-Appellee; and that said decree of the Circuit Court of Appeals may be reversed by this Honorable Court; and that your petitioner may have such other and further relief in the premises as may seem just.

MESECK TOWING & TRANSPORTATION
COMPANY,

By CHRISTOPHER E. HECKMAN,
Counsel.

